

**SUPREME COURT MINUTES
TUESDAY, NOVEMBER 25, 2003
SAN FRANCISCO, CALIFORNIA**

S119066

B137034 Second Appellate District,
B117225 Division Four

PEOPLE v. SALAZAR
Petition for review granted

Brown, J., was absent and did not participate.
Votes: George, C.J., Kennard, Baxter and
Werdegar, JJ.

S119234

C034960 Third Appellate District

PEOPLE v. VO
Petitions for review granted/briefing deferred (rule 29.1)

Further action in this matter is deferred pending consideration and disposition of a related issue in *People v. Lopez*, S119294 (see Cal. Rules of Court, rule 28.2(c), or pending further order of the court. Submission of additional briefing, pursuant to California Rules of Court, rule 29.1, is deferred pending further order of the court.

Brown, J., was absent and did not participate.
Votes: George, C.J., Baxter, Werdegar, Chin,
and Moreno, JJ.

S112373

WOFFORD (MICHAEL R.) ON H.C.
OSC issued, returnable in Superior Court

The Director of Corrections is ordered to show cause, before the San Bernardino County Superior Court, when the matter is ordered on calendar: (1) why petitioner should not be permitted to withdraw his guilty plea in Case Number FVI08070 because his plea agreement was not honored (see Attorney General's concession at pages 1 and 4 of Informal Response); and (2) why the trial court, if petitioner agrees to plead guilty, should not sentence petitioner concurrently with the sentence imposed in Orange County Superior Court Case Numbers 97HF0402 and 98HF0402, pursuant to the original plea agreement. (*Ibid.*) The return shall be filed on or before December 26, 2003.

Brown, J., was absent and did not participate.
Votes: George, C.J., Kennard, Baxter,
Werdegar, Chin and Moreno, JJ.

S118796

B149425 Second Appellate District,
Division Seven

PEOPLE v. ROBINSON

Petition for review granted; transferred to CA 2/7

The above-entitled review is hereby transferred to the Court of Appeal, Second Appellate District, Division Seven, with directions to vacate its decision and to reconsider the cause in light of *People v. Yeoman* (2003) 31 Cal.4th 93.

Brown, J., was absent and did not participate.
Votes: George, C.J., Baxter, Werdegar, Chin and Moreno, JJ.

S119960

B170615 Second Appellate District,
Division Five

CENTENO v. S.C. (PEOPLE)

Review granted; transferred to CA 2/5 to issue OSC

Request for judicial notice granted.
Petition for review granted.
The matter is transferred to the Court of Appeal, Second Appellate District, Division Five, with directions to vacate its order denying prohibition or mandate and to issue an order directing respondent court to show cause why the relief sought in the petition should not be granted. The stay order issued in this court shall remain in effect pending further order of the Court of Appeal.

Brown, J., was absent and did not participate.
Votes: George, C.J., Kennard, Baxter, Werdegar, Chin and Moreno, JJ.

S109223

B145828 Second Appellate District,
Division Six

PEOPLE v. WOLLSCHLAGER

Dismissed per rule 29.3(b), and remanded to CA 2/6

Brown, J., was absent and did not participate.
Votes: George, C.J., Kennard, Baxter, Werdegar, Chin and Moreno, JJ.

S119002

GUNN (JAMES) ON H.C.

Petition ordered withdrawn pursuant to written request of petitioner.

S120436C037787 Third Appellate District
C038013

THOMPSON v. MILLER

Petition ordered withdrawn pursuant to written request
of petitioner.**S090162**

CUDJO (ARMENIA LEVI) ON H.C.

Petition for writ of habeas corpus denied (AA)

The petition for writ of habeas corpus filed on July 25, 2000, is denied.

Each claim and subclaim is denied on the merits for failure to state a prima facie case for relief.

Each claim and subclaim is barred as untimely (see *In re Robbins* (1998) 18 Cal.4th 770, 780-781; *In re Clark* (1993) 5 Cal.4th 750, 763-799) except claims XXVII, XXXIV through XXXVI, and XXXVIII through XL insofar as they allege that California's death penalty law is unconstitutional, and claim XLI insofar as it alleges denial of meaningful review in the prior habeas corpus proceeding,

Claims II (see *People v. McDermott* (2002) 28 Cal.4th 946, 969-970), III (insofar as it relies on facts in the appellate record), IV and V (see *People v. King* (1970) 1 Cal.3d 791, 804), IX (insofar as it alleges the prosecutor should have granted immunity to a witness) (*People v. Sutter* (1982) 134 Cal.App.3d 806, 813; *People v. Sipress, supra*, 51 Cal.App.3d 98, 102), XI (insofar as it alleges that a witness was not competent to testify) (*People v. Singh, supra*, 182 Cal. at p. 484), and XII (see *People v. Medina* (1990) 51 Cal.3d 870, 895) are barred for failure to assert them in the trial court.

Except to the extent they allege ineffective assistance of counsel or challenge the constitutionality of the 1978 death penalty law, the following claims and subclaims are barred because, being based entirely on the facts in the appellate record, they could have been, but were not, raised on appeal (see *In re Harris* (1993) 5 Cal.4th 813, 825, fn. 3; *In re Dixon* (1953) 41 Cal.2d 756, 759): II, III (except for the allegation that one juror misunderstood the standard of proof), IV, V, XVII (insofar as it alleges improper jury instructions and

prosecutorial argument relating to the standard of proof at the guilt phase), XXIII (insofar as it alleges prosecutorial misconduct in argument to the jury), XXV, XXXI, and XXXV.

The following claims and subclaims are barred as repetitive because they were raised in a previous habeas corpus petition that this court denied (see *In re Miller* (1941) 17 Cal.2d 734, 735): I, VIII through XIV, XV (except subclaims B.4 and C), XVI, XVII, XXI through XXV, XXXI, and XXXII.

Except insofar as they allege ineffective assistance of counsel or challenge the constitutionality of the 1978 death penalty law, the following claims are barred because they were raised and rejected on appeal (see *In re Harris, supra*, 5 Cal.4th at p. 825; *In re Waltreus* (1965) 62 Cal.2d 218, 225): I, VIII through XII, XVI (except subclaim B), XVIII, XXVI, XXVIII through XXX, XXXII, and XXXV.

Insofar as they raise Fourth Amendment challenges to the legality of a search and seizure, claim XIV and subclaims XV.D and XVI.H are not cognizable on habeas corpus. (*In re Terry* (1971) 4 Cal.3d 911, 926; *In re Sterling* (1965) 63 Cal.2d 486, 487.)

Kennard, J., would issue an order to show cause on claim VI.

Brown, J., was absent and did not participate.

S104589

LUCERO (PHILLIP L.) ON H.C.

Petition for writ of habeas corpus denied (AA)

The petition for writ of habeas corpus is denied on the merits, except for Claim Thirteen, which is dismissed as premature. Claim Eight is also denied on the ground that it was raised and rejected on appeal.

Petitioner's request for judicial notice of the record from his direct appeals is granted.

Brown, J., was absent and did not participate.

S115061

CLARK (DOUGLAS DANIEL) ON H.C.
Petition for writ of habeas corpus denied (AA)

The petition for writ of habeas corpus filed on April 14, 2003, is denied. Except to the extent petitioner claims his attorneys provided ineffective assistance (see *People v. Mendoza Tello* (1997) 15 Cal.4th 264, 267), claims 2, 5, 8, and 11 are denied on the ground that they could have been, but were not, raised on appeal. (*In re Harris* (1993) 5 Cal.4th 813, 825, fn. 3; *In re Dixon* (1953) 41 Cal.2d 756, 759.) Except to the extent petitioner claims his attorneys provided ineffective assistance, claims 1, 6, 9, 10 (to the extent the claim is that the court erred in not holding a hearing regarding petitioner's competency to stand trial), 12, and 13 are barred by *In re Waltreus* (1965) 62 Cal.2d 218, 225, to the extent they were raised and rejected on appeal, and by *In re Dixon, supra*, 41 Cal.2d 756, to the extent they were not raised on appeal. All claims are also denied on the merits.

Petitioner's pro se motions regarding counsel, filed September 5, 2003 (two on that date), September 10, 2003, September 11, 2003, September 23, 2003, and September 30, 2003, are denied.

Brown, J., was absent and did not participate.

S120556

CLARK (DOUGLAS DANIEL) ON H.C.
Petition for writ of habeas corpus denied (AA)

Petition for writ of habeas corpus filed on November 19, 2003, is denied on the merits.

S118764

B157388 Second Appellate District,
B163206 Division Three

PEOPLE v. BELL
Petition for review denied

Brown, J., was absent and did not participate.

S118912

B154734 Second Appellate District,
Division Seven

PEOPLE v. BRADLEY
Petition for review & depublication request denied

Brown, J., was absent and did not participate.

S119061

H021971 Sixth Appellate District

PEOPLE v. BEAUMONT INVESTMENT

Petition for review & depublication request denied

Brown, J., was absent and did not participate.

S119108B158166 Second Appellate District,
Division Two

CHARLES LIGETI COMPANY v. ERNIE

GOLDBERGER et al.

Petition for review denied

Brown, J., was absent and did not participate.

S119141B166434 Second Appellate District,
Division Three

COLLINS v. SUDOFISKY

Petition for review denied

Brown, J., was absent and did not participate.

S119216A094861 First Appellate District,
Division Four

PEOPLE v. RANJEL

Petition for review denied

Brown, J., was absent and did not participate.

S119221

C030923 Third Appellate District

PEOPLE v. REAY et al.

Petitions for review denied

Brown, J., was absent and did not participate.

S119257B164451 Second Appellate District,
Division Five

VALLEY CANCER INSTITUTE v. OBANDO

Petition for review denied

Brown, J., was absent and did not participate.

S119273B162197 Second Appellate District,
Division SevenLONG BEACH, CITY OF v. CALIFORNIA CITIZENS
FOR NEIGHBORHOOD EMPOWERMENT et al.

Petition for review & depublication request denied

Brown, J., was absent and did not participate.

S119300

E031437 Fourth Appellate District,
Division Two

PEOPLE v. YUM

Petition for review denied; CA opinion decertified

The Reporter of Decisions is directed not to publish in the Official Appellate Reports the opinion in the above entitled appeal filed August 22, 2003, which appears at 111 Cal.App.4th 635. (Cal. Const., art. VI, section 14; rule 976, Cal. Rules of Court.)
Brown, J., was absent and did not participate.

S119409

B152739 Second Appellate District,
Division Eight

BOSTANIAN v. CALIFORNIA FAIR PLAN ASSN

Petition for review denied

Brown, J., was absent and did not participate.

S119426

A099064 First Appellate District,
Division Four

GILKEY v. HILL

Petition for review denied

Brown, J., was absent and did not participate.

S119455

B162085 Second Appellate District,
Division Four

PEOPLE v. HURTH

Petition for review denied

Brown, J., was absent and did not participate.

S119491

H024330 Sixth Appellate District

PEREZ v. SANTA CLARA COUNTY ELMWOOD

Petition for review denied

Kennard, J., and Werdegar, J., are of the opinion the petition should be granted.
Brown, J., was absent and did not participate.

S119493

H026439 Sixth Appellate District

MOLEA v. S.C. (PEOPLE)

Petition for review denied

Brown, J., was absent and did not participate.

S119502

A092987 First Appellate District,
A100180 Division Three

PEOPLE v. MCLAUGHLIN

Petition for review denied

Brown, J., was absent and did not participate.

S119535
C041189 Third Appellate District

CALIFORNIA TEACHERS ASSOCIATION v. CALIF.
COMMISSION ON TEACHERS CREDENTIAL
Petition for review denied

Brown, J., was absent and did not participate.

S119551
B159701 Second Appellate District,
Division Five

PEOPLE v. GARCIA
Petition for review denied

Brown, J., was absent and did not participate.

S119552
B167889 Second Appellate District,
Division One

SHOOKER v. S.C. (WINNICK)
Petition for review & depublication request denied

George, C.J., and Brown, J., were recused and
did not participate.

S119561
B159390 Second Appellate District,
Division Two

PEOPLE v. HAYNES
Petitions for review denied

Brown, J., was absent and did not participate.

S119585
B159290 Second Appellate District,
Division One

PEOPLE v. LOPEZ (OSCAR E.)
Petition for review denied

Brown, J., was absent and did not participate.

S119595
G029957 Fourth Appellate District,
Division Three

PEOPLE v. LUNA
Petition for review denied

Brown, J., was absent and did not participate.

S119598
C042341 Third Appellate District

PEOPLE v. CHAFFER
Petition for review denied

Kennard, J., is of the opinion the petition should
be granted.
Brown, J., was absent and did not participate.

S119604

B159850 Second Appellate District,
Division Three

JACKSON v. CITY OF LOS ANGELES
Petition for review denied

Request for judicial notice denied.

Brown, J., was absent and did not participate.

S119638

A099051 First Appellate District,
Division Five

PEOPLE v. ANDERSON
Petition for review denied

Brown, J., was absent and did not participate.

S119656

B156969 Second Appellate District,
Division Three

PEOPLE v. BRANDON
Petitions for review denied

Brown, J., was absent and did not participate.

S119673

B157628 Second Appellate District,
Division Seven

PEOPLE v. CARROLL
Petition for review denied

Brown, J., was absent and did not participate.

S119682

B145450 Second Appellate District,
Division Seven

PEOPLE v. RAUSSE
Petition for review denied

Brown, J., was absent and did not participate.

S119699

B160909 Second Appellate District,
Division Four

PEOPLE v. CRUZATA
Petition for review denied

Brown, J., was absent and did not participate.

S119704

E032410 Fourth Appellate District,
Division Two

PEOPLE v. BLANCO
Petition for review denied

Brown, J., was absent and did not participate.

S119719

E032165 Fourth Appellate District,
Division Two

PEOPLE v. RICHARDSON / PATTON
Petitions for review denied

Brown, J., was absent and did not participate.

S119737
F040081 Fifth Appellate District

PEOPLE v. CHAVEZ
Petition for review denied

Brown, J., was absent and did not participate.

S119739
B156542 Second Appellate District,
Division Six

ALKASEM v. CHEVRON USA, INC.
Petition for review denied

Kennard, J., was recused and did not participate.
Brown, J., was absent and did not participate.

S119744
B160845 Second Appellate District,
Division Five

SUAREZ v. CARLTON
Petition for review denied

Brown, J., was absent and did not participate.

S119765
A097143 First Appellate District,
A097706 Division Five

GLOBAL INTERPRINT, INC. v. BURTON
Petition for review denied

Application to appear pro hac vice denied.

Brown, J., was absent and did not participate.

S119783
F039994 Fifth Appellate District

PEOPLE v. CELAYA
Petition for review denied

Brown, J., was absent and did not participate.

S119787
A102649 First Appellate District,
Division One

MCCOLM v. THEOHARIS
Petition for review denied

Brown, J., was absent and did not participate.

S119793
B158221 Second Appellate District,
Division Five

PEOPLE v. NOVELO
Petition for review denied

Brown, J., was absent and did not participate.

S119795

B155138 Second Appellate District,
Division Six

PEOPLE v. MOSS

Petition for review denied

Brown, J., was absent and did not participate.

S119796

F041498 Fifth Appellate District

PEOPLE v. LEVEEN

Petition for review denied

Motion to stay issuance of remittitur denied.

Brown, J., was absent and did not participate.

S119811

KLAT v. CA 4 (SAN DIEGO COUNTY HEALTH)

Petition for writ of mandate/prohibition denied

Brown, J., was absent and did not participate.

S119812

B163700 Second Appellate District,
Division Six

PEOPLE v. FLAMENCO

Petition for review denied

Brown, J., was absent and did not participate.

S119814

E032461 Fourth Appellate District,
Division Two

WARMOTH v. NEWMAN

Petition for review denied

Brown, J., was absent and did not participate.

S119817

A103395 First Appellate District,
Division Three

MCCOLM v. SAN FRANCISCO

Petition for review denied

Brown, J., was absent and did not participate.

S119822

F041072 Fifth Appellate District

PEOPLE v. GIBSON

Petition for review denied

Brown, J., was absent and did not participate.

S119837

B160857 Second Appellate District,
Division Eight

AGUILAR v. CHANG

Petition for review denied

Brown, J., was absent and did not participate.

S119842

F039896 Fifth Appellate District

PEOPLE v. PUCHETA

Petition for review denied

Baxter, J., was recused and did not participate.
Brown, J., was absent and did not participate.

S119844B168488 Second Appellate District,
Division Four

OSTOPOSIDES v. S.C. (GLIMP)

Petition for review denied

Brown, J., was absent and did not participate.

S119846E032016 Fourth Appellate District,
Division Two

PEOPLE v. VIZCAINO

Petition for review denied

Brown, J., was absent and did not participate.

S119847B160196 Second Appellate District,
Division Five

PEOPLE v. HEBERT

Petition for review denied

Brown, J., was absent and did not participate.

S119850

C041615 Third Appellate District

PEOPLE v. JOURNEY

Petition for review denied

Brown, J., was absent and did not participate.

S119852B158230 Second Appellate District,
Division Four

GRIGGS v. BIG TICKET TELEVISION

Petition for review denied

Brown, J., was absent and did not participate.

S119856B166917 Second Appellate District,
Division Six

SIMI VALLEY, CITY OF v. S.C. (BAYER)

Petition for review denied

Kennard, J., is of the opinion the petition should
be granted.
Brown, J., was recused and did not participate.

S119861B158413 Second Appellate District,
Division Four

ORTEGA v. DIXON

Petition for review denied

Brown, J., was absent and did not participate.

S119864

A101556 First Appellate District,
Division Three

PEOPLE v. WADE

Petition for review denied

Brown, J., was absent and did not participate.

S119866

H024716 Sixth Appellate District

PEOPLE v. YEPEZ

Petition for review denied

Brown, J., was absent and did not participate.

S119868

E031818 Fourth Appellate District,
Division Two

PEOPLE v. HOWARD

Petition for review denied

Brown, J., was absent and did not participate.

S119874

B160849 Second Appellate District,
Division Seven

HENNESSY v. CORNELL

Petition for review denied

Brown, J., was absent and did not participate.

S119875

C040756 Third Appellate District

POPE v. SAN JUAN UNIFIED SCHOOL

Petition for review denied

Brown, J., was absent and did not participate.

S119878

B160383 Second Appellate District,
Division Seven

PEOPLE v. RODRIGUEZ

Petition for review denied

Brown, J., was absent and did not participate.

S119880

B169379 Second Appellate District
Division P

JANOUSEK v. FERRIS

Petition for review denied

Brown, J., was absent and did not participate.

S119883

E034383 Fourth Appellate District,
Division Two

SHAH v. S.C. (HATTAWAY)

Petition for review denied

Brown, J., was absent and did not participate.

S119886

A100681 First Appellate District,
Division Three

PEOPLE v. CUNNINGHAM

Petition for review denied

Brown, J., was absent and did not participate.

S119889

E031555 Fourth Appellate District,
Division Two

PEOPLE v. WATTREE

Petition for review denied

Brown, J., was absent and did not participate.

S119892

B162562 Second Appellate District,
Division Seven

PEOPLE v. CASTANEDA

Petition for review denied

Brown, J., was absent and did not participate.

S119898

C040221 Third Appellate District

PEOPLE v. GAGE

Petition for review denied

Brown, J., was absent and did not participate.

S119901

B170289 Second Appellate District,
Division One

CLANCY v. S.C. (AMERICAN TELEPHONE & TEL)

Petition for review denied

Brown, J., was absent and did not participate.

S119906

B161596 Second Appellate District,
Division Four

PEOPLE v. DAVIS

Petition for review denied

Brown, J., was absent and did not participate.

S119907

A100704 First Appellate District,
Division One

BAUER v. MIOTTEL

Petition for review denied

Brown, J., was absent and did not participate.

S119908

F039995 Fifth Appellate District

PEOPLE v. LAXSON

Petition for review denied

Brown, J., was absent and did not participate.

S119911
C041976 Third Appellate District

PEOPLE v. HOLLIS
Petition for review denied

Brown, J., was absent and did not participate.

S119912
B159764 Second Appellate District,
Division Six

PEOPLE v. MORENO
Petition for review denied

Brown, J., was absent and did not participate.

S119914
D039046 Fourth Appellate District,
Division One

PEOPLE v. NEWSOME
Petition for review denied

Brown, J., was absent and did not participate.

S119916
F041936 Fifth Appellate District

PEOPLE v. ROBBINS
Petition for review denied

Brown, J., was absent and did not participate.

S119919
B162559 Second Appellate District,
Division Four

PEOPLE v. BIVENS
Petition for review denied

Brown, J., was absent and did not participate.

S119923
B164718 Second Appellate District,
Division Five

THE BEST SERVICE CO. v. OKAMOTO
Petition for review denied

Request for judicial notice denied.

Brown, J., was absent and did not participate.

S119926
C041647 Third Appellate District

PEOPLE v. MACHEN
Petition for review denied

Brown, J., was absent and did not participate.

S119938
G030298 Fourth Appellate District,
Division Three

MOULTON v. COLOMBO
Petition for review denied

Brown, J., was absent and did not participate.

S119955

A100548 First Appellate District,
Division Four

PEOPLE v. HOUSTON
Petition for review denied

Brown, J., was absent and did not participate.

S119965

B158551 Second Appellate District,
Division Six

KITTY-ANNE MUSIC CO. v. SWAN
Petition for review denied

Brown, J., was absent and did not participate.

S119966

B161259 Second Appellate District,
Division Six

ARVETIS v. EURO CLASSIC BODY SHOP
Petition for review denied

Brown, J., was absent and did not participate.

S119969

A099172 First Appellate District,
Division One

PEOPLE v. MOLINE
Petition for review denied

Brown, J., was absent and did not participate.

S119970

B159439 Second Appellate District,
Division Three

PEOPLE v. ORTEGA
Petition for review denied

Kennard, J., is of the opinion the petition should
be granted.

Brown, J., was absent and did not participate.

S119971

A100602 First Appellate District,
Division Three

MOORE v. GRIFFIN et al.
Petition for review denied

Brown, J., was absent and did not participate.

S119980

D040802 Fourth Appellate District,
Division One

PEOPLE v. SANCHEZ
Petition for review denied

Brown, J., was absent and did not participate.

S119986

D042908 Fourth Appellate District,
Division One

BAUMER v. S.C. (MCGRUER)
Petition for review denied

Brown, J., was absent and did not participate.

S119999

B162931 Second Appellate District,
Division Three

PEOPLE v. MENEFIELD
Petition for review denied

Brown, J., was absent and did not participate.

S120004

B158147 Second Appellate District,
Division Eight

PEOPLE v. ZAHORIK
Petition for review denied

Brown, J., was absent and did not participate.

S120013

B160434 Second Appellate District,
Division Two

PEOPLE v. LOPEZ (LEON C.)
Petition for review denied

S120023

G030343 Fourth Appellate District,
G031568 Division Three

PEOPLE v. LOPEZ (ANDREW H.)
Petition for review denied

Brown, J., was absent and did not participate.

S120041

E031634 Fourth Appellate District,
Division Two

BUCHMILLER, MARRIAGE OF
Petition for review denied

Brown, J., was absent and did not participate.

S120057

B160774 Second Appellate District,
Division Seven

PEOPLE v. PEREZ
Petition for review denied

Brown, J., was absent and did not participate.

S120068

C044746 Third Appellate District

EARLEY v. W.C.A.B. (KEMPER INSURANCE)
Petition for review denied

Brown, J., was absent and did not participate.

S120199

G032504 Fourth Appellate District,
Division Three

EAKIN v. S.C. (TUSTIN)
Petition for review and application for stay denied

Brown, J., was absent and did not participate.

S120201

G032503 Fourth Appellate District,
Division Three

BURGI v. S.C. (GROVE)

Petition for review and application for stay denied

Brown, J., was absent and did not participate.

S120240

GRACE v. CA 2 (DEPT. OF CORRECTIONS)

Petition for writ of mandate denied

Brown, J., was absent and did not participate.

S120508

B141342 Second Appellate District,
Division Two

LING v. CALIF. BREEZE HOMEOWNERS ASSN

Petition for review denied

Brown, J., was absent and did not participate.

S120510

F044236 Fifth Appellate District

LANE (IRA LARAY) ON H.C.

Application for stay and petition for review denied

Baxter, J., was recused and did not participate.

Brown, J., was absent and did not participate.

S113195

ADKINS (ALDO) ON H.C.

Petition for writ of habeas corpus denied

Brown, J., was absent and did not participate.

S113375

WARREN (JOHN A.) ON H.C.

Petition for writ of habeas corpus denied

Brown, J., was absent and did not participate.

S113467

AVILA (PERRY R.) ON H.C.

Petition for writ of habeas corpus denied

Brown, J., was absent and did not participate.

S113561

YEUNG (BRUCE W.) ON H.C.

Petition for writ of habeas corpus denied

Kennard, J., is of the opinion an order to show
cause should issue.

Brown, J., was absent and did not participate.

SAN FRANCISCO

NOVEMBER 25, 2003

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S114330

SOWELL (NATHANIEL) ON H.C.
Petition for writ of habeas corpus denied

Brown, J., was absent and did not participate.

S114334

MERCADO (ALEJANDRO) ON H.C.
Petition for writ of habeas corpus denied with citation(s)

Brown, J., was absent and did not participate.

S114340

CLEMENT (JAMES) ON H.C.
Petition for writ of habeas corpus denied

Brown, J., was absent and did not participate.

S114410

HOLMES (LARRY WAYNE) ON H.C.
Petition for writ of habeas corpus denied with citation(s)

Brown, J., was absent and did not participate.

S114712

TAYLOR (PETER A.) ON H.C.
Petition for writ of habeas corpus denied

Brown, J., was absent and did not participate.

S114843

MORENO (LOUIE) ON H.C.
Petition for writ of habeas corpus denied

Brown, J., was absent and did not participate.

S114845

GADLIN (GREGORY) ON H.C.
Petition for writ of habeas corpus denied with citation(s)

Brown, J., was absent and did not participate.

S114846

TYSON (TIMMY RAY) ON H.C.
Petition for writ of habeas corpus denied

Brown, J., was absent and did not participate.

S114857

DANIELS (SONYA MARIE) ON H.C.
Petition for writ of habeas corpus denied

Brown, J., was absent and did not participate.

S114865

NGO (HUY) ON H.C.
Petition for writ of habeas corpus denied with citation(s)

Brown, J., was absent and did not participate.

S114867

VEA (PEDRO RAMIRO) ON H.C.
Petition for writ of habeas corpus denied with citation(s)

Brown, J., was absent and did not participate.

S114869

BYERS (CLIFFORD) ON H.C.
Petition for writ of habeas corpus denied

Brown, J., was absent and did not participate.

S114873

BARRIES (ALLEN A.) ON H.C.
Petition for writ of habeas corpus denied with citation(s)

Brown, J., was absent and did not participate.

S114874

PHILLIPS (MICHAEL C.) ON H.C.
Petition for writ of habeas corpus denied

Brown, J., was absent and did not participate.

S114880

ALLEY (RICHARD L.) ON H.C.
Petition for writ of habeas corpus denied with citation(s)

Brown, J., was absent and did not participate.

S114896

MARTIN (HUBERT D.) ON H.C.
Petition for writ of habeas corpus denied

Brown, J., was absent and did not participate.

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S114897

GAINES (DARIUS) ON H.C.
Petition for writ of habeas corpus denied

Brown, J., was absent and did not participate.

S114898

CLEVELAND (PETER) ON H.C.
Petition for writ of habeas corpus denied

Brown, J., was absent and did not participate.

S114906

RAMIREZ (CARLOS JUAN) ON H.C.
Petition for writ of habeas corpus denied with citation(s)

Brown, J., was absent and did not participate.

S114910

JONES (ADOLPHUS) ON H.C.
Petition for writ of habeas corpus denied with citation(s)

Brown, J., was absent and did not participate.

S114912

ANAYA (FRANKIE) ON H.C.
Petition for writ of habeas corpus denied with citation(s)

Brown, J., was absent and did not participate.

S114992

WADE (LEVI) ON H.C.
Petition for writ of habeas corpus denied with citation(s)

Brown, J., was absent and did not participate.

S114996

KARCHER (KURT) ON H.C.
Petition for writ of habeas corpus denied with citation(s)

Brown, J., was absent and did not participate.

S115054

LEE (KENNETH E.) ON H.C.
Petition for writ of habeas corpus denied with citation(s)

Brown, J., was absent and did not participate.

SAN FRANCISCO

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S115070

LEE (GEORGE) ON H.C.
Petition for writ of habeas corpus denied

Brown, J., was absent and did not participate.

S115080

COVINGTON (ERNEST E.) ON H.C.
Petition for writ of habeas corpus denied

Brown, J., was absent and did not participate.

S115107

VIVIAN (PHILLIP M.) ON H.C.
Petition for writ of habeas corpus denied

Brown, J., was absent and did not participate.

S115108

COLEMAN (EDDIE L.) ON H.C.
Petition for writ of habeas corpus denied with citation(s)

Brown, J., was absent and did not participate.

S115113

TEAL (TAMMY L) ON H.C.
Petition for writ of habeas corpus denied

Brown, J., was absent and did not participate.

S115115

ODELL (DEVONNE C.) ON H.C.
Petition for writ of habeas corpus denied with citation(s)

Brown, J., was absent and did not participate.

S115123

ROSAS (JOSE RIVERA) ON H.C.
Petition for writ of habeas corpus denied with citation(s)

Brown, J., was absent and did not participate.

S115126

POARCH (GREGORY R.) ON H.C.
Petition for writ of habeas corpus denied with citation(s)

Brown, J., was absent and did not participate.

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S115131

CLAYTON (FREDERICK R.) ON H.C.
Petition for writ of habeas corpus denied with citation(s)

Brown, J., was absent and did not participate.

S115155

JACKSON (CURTIS) ON H.C.
Petition for writ of habeas corpus denied

Brown, J., was absent and did not participate.

S115159

OLIVARES (JOHN) ON H.C.
Petition for writ of habeas corpus denied

Brown, J., was absent and did not participate.

S115162

GERMAINE (RENE PAUL) ON H.C.
Petition for writ of habeas corpus denied

Brown, J., was absent and did not participate.

S115597

GADLIN (GREGORY) ON H.C.
Petition for writ of habeas corpus denied with citation(s)

Brown, J., was absent and did not participate.

S115666

AVILA (PERRY R.) ON H.C.
Petition for writ of habeas corpus denied

Brown, J., was absent and did not participate.

S115876

TYSON (TIMMY) ON H.C.
Petition for writ of habeas corpus denied with citation(s)

Brown, J., was absent and did not participate.

S116003

TYSON (TIMMY) ON H.C.
Petition for writ of habeas corpus denied with citation(s)

Brown, J., was recused and did not participate.

SAN FRANCISCO

NOVEMBER 25, 2003

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S116789

LEE (GEORGE) ON H.C.

Petition for writ of habeas corpus denied with citation(s)

Brown, J., was absent and did not participate.

S118005

SCOTT (RAYMOND) ON H.C.

Petition for writ of habeas corpus denied

Brown, J., was absent and did not participate.

S118021

KNIGHT (MICHAEL) ON H.C.

Petition for writ of habeas corpus denied

Brown, J., was absent and did not participate.

S119556

KLEMASKE (MITCHEL J.) ON H.C.

Petition for writ of habeas corpus denied

Brown, J., was absent and did not participate.

S120104

VELLA (JOHN ANTHONY) ON H.C.

Petition for writ of habeas corpus denied with citation(s)

Brown, J., was absent and did not participate.

S120117

WILLKOMM (MARK) ON H.C.

Petition for writ of habeas corpus denied

Brown, J., was absent and did not participate.

S120264

GOLIN (NANCY) ON H.C.

Petition for writ of habeas corpus denied

Brown, J., was absent and did not participate.

S115636

H023715 Sixth Appellate District
H025386

PEOPLE v. SULLIVAN

Publication request denied (case closed)

Brown, J., was absent and did not participate.

S119306

A098371 First Appellate District,
A098373 Division Five

RALEY v. CERF

Publication request denied (case closed)

Brown, J., was absent and did not participate.

S119362

G029292 Fourth Appellate District,
Division Three

HOWARD JARVIS TAXPAYERS ASSN v. COUNTY
OF ORANGE (HUNTINGTON BEACH, CITY OF)
Depublication request denied (case closed)

Brown, J., was absent and did not participate.

S119964

F041425 Fifth Appellate District

JESSEN v. HARTFORD CASUALTY INSURANCE
Depublication request denied (case closed)

Chin, J., was recused and did not participate.
Brown, J., was absent and did not participate.

S120351

B160306 Second Appellate District,
Division Six

PEOPLE v. PARHAM

Depublication request denied (case closed)

Brown, J., was absent and did not participate.

S119197

B160125 Second Appellate District,
Division Five

WANG v. HARTUNIAN

Time extended to grant or deny review

to December 31, 2003

S119303

C041034 Third Appellate District,

STANLEY v. CALIF. STATE LOTTERY COMM.
Time extended to grant or deny review

to January 6, 2004

S119309

B160125 Second Appellate District,
Division Five

ZANE v. S.C. (PEOPLE)

Time extended to grant or deny review

to December 24, 2003

S119314

F041747 Fifth Appellate District

ELIZALDI (ANTHONY ADAM) ON H.C.
Time extended to grant or deny review

to December 24, 2003.

S119369

B142962 Second Appellate District,
Division One

COLMENARES v. BRAEMAR COUNTRY CLUB

Time extended to grant or deny review

to December 26, 2003

S119394

G030145 Fourth Appellate District,
Division Three

CAPISTRANO UNIFIED SCH. DIST. v. JAMES R.

Time extended to grant or deny review

to December 29, 2003.

S119431

A103691 First Appellate District,
Division Two

BOLTER v. S.C. (CDC)

Time extended to grant or deny review

to December 31, 2003

S119528

B169984 Second Appellate District,
Division Five

ARMSTRONG v. S.C. (PRIMEPOINT)

Time extended to grant or deny review

to December 31, 2003

S119575

B158572 Second Appellate District,
Division Five

AVILA v. CITRUS COMMUNITY

Time extended to grant or deny review

to January 2, 2004.

S119588

A098793 First Appellate District,
Division Three

STATE ex rel CLEMENTS v. OECHSLE INTL. ADV.

Time extended to grant or deny review

to January 6, 2004

S119616

D037390 Fourth Appellate District,
Division One

ST PAUL MERCURY INSURANCE v. FRONTIER
PACIFIC INSURANCE COMPANY

Time extended to grant or deny review

to January 5, 2004

S119676

G028683 Fourth Appellate District,
Division Three

MCCORD v. MCCORD

Time extended to grant or deny review

to January 8, 2004

S021054

PEOPLE v. MOON (RICHARD R.)
Extension of time granted

to February 2, 2004 to file appellant's reply brief. After that date, no further extension will be granted. Extension is granted based upon Deputy State Public Defender Craig Buckser's representation that he anticipates filing that brief by 1/31/2004.

S041630

PEOPLE v. JABLONSKI (PHILIP C.)
Extension of time granted

to December 18, 2003 to file respondent's brief. Extension is granted based upon Deputy Attorney General Christopher W. Grove's representation that he anticipates filing that brief by 12/18/2003. After that date, no further extension is contemplated.

S043628

PEOPLE v. CARRINGTON (CELESTE)
Extension of time granted

to December 31, 2003 to file appellant's opening brief. Extension is granted based upon Deputy State Public Defender Kathryn E. Collier's representation that she anticipates filing that brief by 12/31/2003. After that date, no further extension will be granted.

S045078

PEOPLE v. CLARK (ROYAL)
Extension of time granted

to January 30, 2004 to file respondent's brief. After that date, only one further extension totaling 60 additional days is contemplated. Extension is granted based upon Deputy Attorney General William K. Kim's representation that he anticipates filing that brief by 4/1/2004.

S055652

PEOPLE v. FUIAVA (FREDDIE)
Extension of time granted

to January 30, 2004 to file appellant's reply
brief.

S056391

PEOPLE v. WILLIAMS (BOB)
Extension of time granted

to February 2, 2004 to file respondent's brief.

S058092

PEOPLE v. HARRIS (MAURICE)
Extension of time granted

to January 20, 2004 to file respondent's brief.
After that date, no further extension is
contemplated. Extension is granted based upon
Deputy Attorney General Rama R. Maline's
representation that she anticipates filing that
brief by 1/17/2004.

S066527

PEOPLE v. LINDBERG (GUNNER J.)
Extension of time granted

to January 26, 2004 to file appellant's opening
brief. The court anticipates that after that date,
only one further extension totaling 60 additional
days will be granted. Counsel is ordered to
inform the Orange County Superior Court and
his or her assisting attorney or entity, if any, and
any assisting attorney or entity of any separate
counsel of record, of this schedule, and take all
steps necessary to meet it.

S069959

PEOPLE v. LEWIS (MICHAEL B.)
Extension of time granted

to January 26, 2004 to file appellant's opening
brief. The court anticipates that after that date,
only two further extensions totaling 120
additional days will be granted. Counsel is
ordered to inform his or her assisting attorney or
entity, if any, and any assisting attorney or
entity of any separate counsel of record, of this
schedule, and to take all steps necessary to
meet it.

S110791JONES (ERNEST) ON H.C.
Extension of time granted

to December 8, 2003 to file the reply to the informal response to the petition for writ of habeas corpus. Extension is granted based upon counsel Micheal Laurence's representation that he anticipates filing that document by 12/8/2003. After that date, no further extension is contemplated.

S111336FIGUEROA (VICENTE B.) ON H.C.
Extension of time granted

to December 22, 2003 to file the reply to the informal response to the petition for writ of habeas corpus. After that date, only two further extensions totaling 50 additional days will be granted. Extension granted based upon counsel Michael Laurence's representation that he anticipates filing that document by 2/11/2004.

S114347ARIAS (PEDRO) ON H.C.
Extension of time granted

to December 19, 2003 to file the informal response to the petition for writ of habeas corpus. The court anticipates that after that date, only one further extension totaling 30 additional days will be granted.

S115318YOUNG (ROBERT) ON H.C.
Extension of time granted

to December 22, 2003 to file the informal response to the petition for writ of habeas corpus. After that date, only one further extension totaling about 10 additional days will be granted. Extension is granted based upon Deputy Attorney General Bruce Ortega's representation that he anticipates filing that document by 12/31/2003.

S116793**FIERRO (DAVID) ON H.C.**
Extension of time granted

to November 26, 2003 to file the informal response to the petition for writ of habeas corpus. Extension is granted based upon Supervising Deputy Attorney General Lilia E. Garcia's representation that she anticipates filing that document by 11/26/2003. After that date, no further extension will be granted.

S005970**PEOPLE v. HART (JOSEPH WILLIAM)**
Counsel appointment order filed

Good cause appearing, the application of appointed associate counsel Richard Phelps Stookey for appointment as counsel of record for condemned inmate Joseph William Hart, in place of lead counsel Philip H. Pennypacker, filed November 17, 2003, is granted.

The order appointing Philip H. Pennypacker as counsel of record for condemned inmate Joseph William Hart, filed June 14, 1990, is hereby vacated.

Associate counsel Richard Phelps Stookey is hereby appointed as counsel of record for condemned inmate Joseph William Hart. Counsel is appointed for purposes of all postconviction proceedings in this court, and for subsequent proceedings, including the preparation and filing of a petition for clemency with the Governor of California, as appropriate.

Brown, J., was absent and did not participate.

S058734**PEOPLE v. HOLMES, MCCLAIN & NEWBORN**
Substitution of counsel ordered

Good cause appearing, the application of appointed counsel for permission to withdraw as attorney of record for appellant Lorenzo Alex Newborn, filed October 23, 2003 (supporting declaration filed Nov. 3, 2003), is granted.

The order appointing Thomas Kallay as appellate counsel of record for appellant

Lorenzo Alex Newborn, filed September 26, 2001, is hereby vacated.

Eric S. Multhaup is hereby appointed as counsel of record to represent appellant Lorenzo Alex Newborn for the direct appeal in the above automatic appeal now pending in this court.

Thomas Kallay is directed to deliver to Eric S. Multhaup, within 30 days from the filing of this order, his copy of the record on appeal in *People v. Holmes, McLain and Newborn*, and all appellate and habeas corpus work product on behalf of appellant Newborn. Mr. Kallay also is directed to deliver to Mr. Multhaup, within 30 days from the filing of this order, all trial files, reports and related materials that he has obtained from trial counsel, paralegals, experts and investigators, or from any other source.

Brown, J., was absent and did not participate.

S058734

PEOPLE v. HOLMES, MCCLAIN & NEWBORN
Order filed

In conjunction with the order filed this day permitting Thomas Kallay to withdraw as appointed appellate counsel of record for appellant Lorenzo Alex Newborn in the above automatic appeal now pending in this court, Mr. Kallay is ordered to reimburse this court the sum of \$20,000, subject to his ability to demonstrate to the court that he should be credited, as appropriate, for appellate “work performed that is determined by the court to be of value to the court.” (See Guidelines for Fixed Fee Appointments, on Optional Basis, to Automatic Appeals and Related Habeas Corpus Proceedings in Cal. Supreme Ct., guideline 11 [“Court Action Upon Nonperformance of Work, and Reimbursement of Fees Upon Authorized Withdrawal of Appointed Counsel”].)

Brown, J., was absent and did not participate.

S079656

BACIGALUPO (MIGUEL A.) ON H.C.
Motion for access to sealed record granted

Respondent's request to transmit to the defense a copy of the transcript of the ex parte hearing held in petitioner's case on September 6, 1985 is granted. A copy of that transcript is enclosed with this order.

S022998

PEOPLE v. TOWNSEL (ANTHONY L.)
Order filed

Appellant's "Declaration of Conflict of Interest Between Attorney and Client," filed on November 6, 2003, treated as a motion to relieve appointed counsel and appoint new counsel in her place, is denied.
Brown, J., was absent and did not participate.

S079656

BACIGALUPO (MIGUEL A.) ON H.C.
Application to file documents under seal granted

- (1) Respondent's Request and Supplemental Request to file documents under seal are granted.
Brown, J., was absent and did not participate.
- (2) Petitioner's Request and Supplemental Request to file Exhibit 89 under seal are granted.
Brown, J., was absent and did not participate.

S106906

E029490 Fourth Appellate District,
Division Two

PEOPLE v. PENA
Order filed

Respondent's request to file a supplemental brief, received on November 24, 2003, is granted. On or before December 15, 2003, Appellant may file a response to Respondent's supplemental brief and to Respondent's motion to take judicial notice.

S117268

HOLLOWAY (DUANE) ON H.C.
Motion denied

Petitioner's "Emergency Application for an Order Authorizing an Out-of-State Deposition for Purposes of Perpetuating Testimony," filed on November 13, 2003, is denied without prejudice to its renewal on the issuance, if any, of an order to show cause. (*People v. Gonzalez* (1990) 51 Cal.3d 1179, 1258-1261.)

Kennard, J., is of the opinion the application should be granted.

Brown, J., was absent and did not participate.

S079656

BACIGALUPO (MIGUEL A.) ON H.C.
Reference hearing ordered

THE COURT:

Based on the record in this matter and good cause appearing:

The Honorable Thomas P. Hansen, Presiding Judge of the Superior Court of California, County of Santa Clara, is directed to select a judge of that court to sit as a Referee in this proceeding and to promptly notify this court of the selection. After appointment by this court, the Referee is to supervise discovery, take evidence, and make findings of fact on the following questions regarding the case of *People v. Miguel Angel Bacigalupo* (Santa Clara Superior Court No. 93351; Judge Thomas C. Hastings):

1. What information did the prosecution obtain before or during petitioner's capital trial regarding a possible connection between one Jose Luis Angarita and the murders of Orestes and Jose Luis Guerrero? What, if any, of this information was given to the defense?

2. Did the confidential informant who testified at an ex parte hearing on September 6, 1985, tell a district attorney investigator or other member of law enforcement connected with this case that the informant had witnessed petitioner's meeting with Angarita and others a day or so before the murders? If so, did the

prosecution convey this information to the defense? If the confidential informant told a district attorney investigator or other member of law enforcement about a meeting between petitioner and Angarita, was this information reliable?

3. Did the prosecution from any source, including those specified below, obtain any information that it did not provide to the defense that would have supported petitioner's claim to the police that he had killed Orestes and Jose Luis Guerrero acting under the Colombian Mafia's death threats to himself or his family?

(a) Interviews of Ronnie Nance or Steve Price?

(b) Interviews of the confidential informant?

(c) In connection with federal prosecutions for which the confidential informant furnished evidence?

4. If the prosecution withheld from the defense information (a) about a possible connection between Jose Luis Angarita and the murders of Orestes and Jose Luis Guerrero; or (b) about a meeting between petitioner, Angarita and others a day or so before the killings; or (c) that would have supported petitioner's claim to police that he killed the Guerrero brothers acting under death threats to him and his family, what penalty phase evidence not otherwise known or available to the defense at the time of trial would have come to light had the withheld information been disclosed?

5. Did a district attorney investigator or other member of law enforcement connected with this case instruct the confidential informant to withhold information at the ex parte hearing held on September 6, 1985? If so, what information, if any, did the confidential informant withhold at that ex parte hearing? Did the district attorney investigator testify truthfully at the September 6, 1985, ex parte hearing?

6. Is it likely that disclosure of the confidential informant's identity to the defense would have led to evidence not otherwise known or available to the defense at the time of trial that would have supported petitioner's

claim to have acted under death threats from the Colombian Mafia? If so, what is that evidence?

7. At the time of trial, what information was known to the prosecution that would have supported a theory that petitioner was hired to commit the murders or that otherwise could have been used to impeach a penalty phase case in mitigation based on petitioner having acted under duress?

S118756

SACKS ON DISCIPLINE

Recommended discipline imposed

It is ordered that **LEE SACKS, State Bar No. 59029**, be suspended from the practice of law for one year, that execution of suspension be stayed, and that he be placed on probation for two years on condition that he be actually suspended for 30 days. Respondent is also ordered to comply with the other conditions of probation recommended by the Hearing Department of the State Bar Court in its order approving stipulation filed July 30, 2003. It is further ordered that he take and pass the Multistate Professional Responsibility Examination within one year after the effective date of this order. (See *Segretti v. State Bar* (1976) 15 Cal.3d 878, 891, fn. 8.) Costs are awarded to the State Bar pursuant to Business & Professions Code section 6086.10 and payable in equal installments for membership years 2004, 2005 and 2006.

S118757

SMEAL ON DISCIPLINE

Recommended discipline imposed

It is ordered that **DENNIS RAYMOND SMEAL, State Bar No. 107762**, be suspended from the practice of law for one year, that execution of the suspension be stayed, and that he be actually suspended from the practice of law for 90 days, as recommended by the Hearing Department of the State Bar Court in its decision filed on July 24, 2003; and until the State Bar Court grants a motion to terminate his

actual suspension pursuant to rule 205 of the Rules of Procedure of the State Bar of California. Respondent is also ordered to comply with the conditions of probation, if any, hereinafter imposed by the State Bar Court as a condition for terminating his actual suspension. If respondent is actually suspended for two years or more, he shall remain actually suspended until he provides proof to the satisfaction of the State Bar Court of his rehabilitation, fitness to practice and learning and ability in the general law pursuant to standard 1.4(c)(ii) of the Standards for Attorney Sanctions for Professional Misconduct. It is further ordered that respondent take and pass the Multistate Professional Responsibility Examination within one year after the effective date of this order or during the period of his actual suspension, whichever is longer. (See *Segretti v. State Bar* (1976) 15 Cal.3d 878, 891, fn. 8.) It is further ordered that respondent comply with rule 955 of the California Rules of Court, and that he perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of this order.* Costs are awarded to the State Bar in accordance with Business & Professions Code section 6086.10 and payable in accordance with Business & Professions Code section 6140.7. *(See Bus. & Prof. Code, § 6126, subd. (c).)

S118758

SMITH ON DISCIPLINE
Recommended discipline imposed

It is ordered that **EVAN LLEWELLYN SMITH, State Bar No. 101369**, be suspended from the practice of law for one year and until he provides proof satisfactory to the State Bar Court of his rehabilitation, fitness to practice and present learning and ability in the general law pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct, that execution of the suspension be stayed, and that he be placed on probation for three years subject to the conditions of

probation recommended by the Hearing Department of the State Bar Court in its order approving stipulation filed on July 23, 2003. It is further ordered that he take and pass the Multistate Professional Responsibility Examination within one year after the effective date of this order. (See *Segretti v. State Bar* (1976) 15 Cal.3d 878, 891, fn. 8.) Costs are awarded to the State Bar pursuant to Business & Professions Code section 6086.10 and payable in equal installments for membership years 2004 and 2005.

S118760**TODD ON DISCIPLINE**

Recommended discipline imposed

It is ordered that **MATTHEW P. TODD, State Bar No. 133023**, be suspended from the practice of law for one year, that execution of suspension be stayed, and that he be placed on probation for one year on condition that he be actually suspended for one month. Respondent is also ordered to comply with the other conditions of probation recommended by the Hearing Department of the State Bar Court in its Order Approving Stipulation filed July 3, 2003. It is further ordered that he take and pass the Multistate Professional Responsibility Examination within one year after the effective date of this order. (See *Segretti v. State Bar* (1976) 15 Cal.3d 878, 891, fn. 8.) Costs are awarded to the State Bar pursuant to Business & Professions Code section 6086.10 and one half of said costs shall be payable in membership years 2004 and 2005.

S118761**SCHECK ON DISCIPLINE**

Recommended discipline imposed

It is ordered that **EDGAR E. SCHECK, State Bar No. 42369**, be suspended from the practice of law for one year, that execution of suspension be stayed, and that he be placed on probation for three years on condition that he be actually suspended for 60 days. Respondent is also

ordered to comply with the other conditions of probation recommended by the Hearing Department of the State Bar Court in its order approving stipulation filed July 17, 2003. It is further ordered that he take and pass the Multistate Professional Responsibility Examination within one year after the effective date of this order. (See *Segretti v. State Bar* (1976) 15 Cal.3d 878, 891, fn. 8.) Costs are awarded to the State Bar and one-fourth of said costs shall be added to and become part of the membership fees for the years 2005, 2006, 2007 and 2008. (Business & Professions Code section 6086.10.)

S118765**ASHER ON DISCIPLINE**

Recommended discipline imposed

It is ordered that **DAVID ASHER, State Bar No. 177038**, be suspended from the practice of law for one year, that execution of the suspension be stayed, and that he be actually suspended from the practice of law for 90 days, as recommended by the Hearing Department of the State Bar Court in its decision filed on July 10, 2003; and until the State Bar Court grants a motion to terminate his actual suspension pursuant to rule 205 of the Rules of Procedure of the State Bar of California. Respondent is also ordered to comply with the conditions of probation, if any, hereinafter imposed by the State Bar Court as a condition for terminating his actual suspension. If respondent is actually suspended for two years or more, he shall remain actually suspended until he provides proof to the satisfaction of the State Bar Court of his rehabilitation, fitness to practice and learning and ability in the general law pursuant to standard 1.4(c)(ii) of the Standards for Attorney Sanctions for Professional Misconduct. It is further ordered that respondent take and pass the Multistate Professional Responsibility Examination within one year after the effective date of this order or during the period of his actual suspension, whichever is longer. (See *Segretti v. State Bar*

(1976) 15 Cal.3d 878, 891, fn. 8.) It is further ordered that respondent comply with rule 955 of the California Rules of Court, and that he perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of this order.* Costs are awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and payable in accordance with Business and Professions Code section 6140.7. *(See Bus. & Prof. Code, § 6126, subd. (c).)

S118766**DEWITT ON DISCIPLINE**

Recommended discipline imposed

It is ordered that **TIMOTHY A. DEWITT, State Bar No. 150631**, be suspended from the practice of law for 60 days, that execution of the suspension be stayed, and that he be placed on probation for 18 months subject to the conditions of probation recommended by the Hearing Department of the State Bar Court in its order approving stipulation filed on July 23, 2003. It is further ordered that he take and pass the Multistate Professional Responsibility Examination within one year after the effective date of this order. (See *Segretti v. State Bar* (1976) 15 Cal.3d 878, 891, fn. 8.) Costs are awarded to the State Bar pursuant to Business & Professions Code section 6086.10 and payable in equal installments for membership years 2004, 2005, 2006, 2007 and 2008.

S118767**EISER ON DISCIPLINE**

Recommended discipline imposed

It is ordered that **JAY NATHAN EISER, State Bar No. 68860**, be suspended from the practice of law for four years and until he provides proof satisfactory to the State Bar Court of his rehabilitation, fitness to practice and present learning and ability in the general law pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct, that execution of the suspension be stayed, and that he be placed on probation for five years on

condition that he be actually suspended for three years and until he complies with standard 1.4(c)(ii) as previously set forth; and until he makes restitution to Jose M. Torreblanca, M.D., and/or the San Martin de Porres Medical Clinic in the amount of \$4670 plus 10% interest per annum from February 21, 2002; to Graziani Chiropractic in the amount of \$3248.04 plus 10% interest per annum from August 6, 2001; to Frederico Martinez in the amount of \$3033.34 plus 10% interest per annum from December 1, 2001; to Noriega Chiropractic Clinic in the amount of \$2330 plus 10% interest per annum from August 30, 2001; to Maria L. Gonzales in the amount of \$4000 plus 10% interest per annum from January 30, 2002; to Maria L. Gonzales in the amount of \$1050 plus 10% interest per annum from August 17, 2001; and to Graziani Chiropractic in the amount of \$4819 plus 10% interest per annum from August 6, 2001, (or the Client Security Fund, if appropriate) and furnishes satisfactory proof thereof to the State Bar Probation Unit. Respondent is further ordered to comply with the other conditions of probation recommended by the Hearing Department of the State Bar Court in its order approving stipulation filed on July 23, 2003. Respondent is further ordered to comply with rule 955 of the California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of this order.* Costs are awarded to the State Bar pursuant to Business & Professions Code section 6086.10 and payable in equal installments for membership years 2004, 2005 and 2006.

*(See Bus. & Prof. Code, § 6126, subd. (c).)

S118768

JONES ON DISCIPLINE
Recommended discipline imposed

It is ordered that **CASSANDRA DENISE JONES, State Bar No. 170053**, be suspended from the practice of law for two years, that execution of suspension be stayed, and that she

be placed on probation for two years on condition that she be actually suspended for 60 days. Respondent is also ordered to comply with the other conditions of probation recommended by the Hearing Department of the State Bar Court in its order approving stipulation filed July 2, 2003. It is further ordered that she take and pass the Multistate Professional Responsibility Examination within one year after the effective date of this order. (See *Segretti v. State Bar* (1976) 15 Cal.3d 878, 891, fn. 8.) Costs are awarded to the State Bar and one-fifth of said costs shall be added to and become part of the membership fees for the years 2004, 2005, 2006, 2007 and 2008. (Business & Professions Code section 6086.10.)

S118771**KURTISS ON DISCIPLINE**

Recommended discipline imposed: disbarred

It is hereby ordered that **PETER J. KURTISS, State Bar No. 159237**, be disbarred from the practice of law and that his name be stricken from the roll of attorneys. Respondent is also ordered to comply with rule 955 of the California Rules of Court, and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the date this order is effective.* Costs are awarded to the State Bar.

*(See Bus. & Prof. Code, § 6126, subd. (c).)

S120629**MERINO ON RESIGNATION**

Resignation accepted with disc. proceeding pending

The voluntary resignation of **Jose Maria Durazo Merino, State Bar No. 59734**, as a member of the State Bar of California is accepted without prejudice to further proceedings in any disciplinary proceeding pending again st respondent should he hereafter seek reinstatement. It is ordered that he comply with rule 955 of the California Rules of Court and that he perform the acts specified in subdivisions (a) and (c) of that rule within

30 and 40 days, respectively, after the date this order is filed.* Costs are awarded to the State Bar.

*(See Bus. & Prof. Code, § 6126, subd. (c).)

S120632

HILL ON RESIGNATION

Resignation accepted with disc. proceeding pending

The voluntary resignation of **FLOYD SHERWOOD HILL, State Bar No. 31313**, as a member of the State Bar of California is accepted without prejudice to further proceedings in any disciplinary proceeding pending against respondent should he hereafter seek reinstatement. It is ordered that he comply with rule 955 of the California Rules of Court and that he perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the date this order is filed.* Costs are awarded to the State Bar.

*(See Bus. & Prof. Code, § 6126, subd. (c).)

S120635

CARNE ON RESIGNATION

The voluntary resignation of **John Elliott Carne, State Bar No. 53270**, as a member of the State Bar of California is accepted.

S120636

COHN ON RESIGNATION

The voluntary resignation of **Mark Forrest Cohn, State Bar No. 85118**, as a member of the State Bar of California is accepted.

S120640

HANFORD ON DISCIPLINE

The voluntary resignation of **Jerry West Hanford, State Bar No. 74018**, as a member of the State Bar of California is accepted.

S120644

MCLAUGHLIN ON RESIGNATION

Resignation accepted with disc. proceeding pending

The voluntary resignation of **Marcus McLaughlin, State Bar No. 159736**, as a member of the State Bar of California is accepted without prejudice to further proceedings in any disciplinary proceeding pending against respondent should he hereafter seek reinstatement. It is ordered that he comply with rule 955 of the California Rules of Court and that he perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the date this order is filed.* Costs are awarded to the State Bar.

*(See Bus. & Prof. Code, § 6126, subd. (c).)

B163707 Second Appellate District

SARGON ENTERPRISES INC. v. UNIVERSITY OF SOUTHERN CALIFORNIA et al.

The above-entitled matter, now pending in the Court of Appeal, Second Appellate District, is transferred from Division Two to Division One.

B167622 Second Appellate District

PEOPLE v. TONY S.

The above-entitled matter, now pending in the Court of Appeal, Second Appellate District, is transferred from Division Eight to Division Five.

B166762 Second Appellate District

PROSPECT HEALTH, etc. v. SAIED DALLALZADEH, M.D. etc. et al.

The above-entitled matter, now pending in the Court of Appeal, Second Appellate District, is transferred from Division One to Division Two.

B169819 Second Appellate District

PEOPLE v. DALE L.

The above-entitled matter, now pending in the Court of Appeal, Second Appellate District, is transferred from Division Seven to Division Five.

SAN FRANCISCO

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B170206 Second Appellate District

PEOPLE v. MICHAEL P.

The above-entitled matter, now pending in the Court of Appeal, Second Appellate District, is transferred from Division Five to Division Seven.

B170209 Second Appellate District

PEOPLE v. DANNY C.

The above-entitled matter, now pending in the Court of Appeal, Second Appellate District, is transferred from Division Five to Division Eight.

**SUPREME COURT CALENDAR
SAN FRANCISCO SESSION
TUESDAY, JANUARY 6, 2004**

The following cases are placed upon the calendar of the Supreme Court for hearing at its courtroom, located at 350 McAllister Street, Fourth Floor, San Francisco, California, on Tuesday, January 6, 2004.

TUESDAY, JANUARY 6, 2004 – 9:00 A.M.

S107616	Huskinson & Brown v. Wolf
S108291	People v. David Woodrow Smith
S113301	Venegas v. County of L.A.

TUESDAY, JANUARY 6, 2004 – 1:30 P.M.

S112443	People v. Harold Taylor
S098817	Covenant Care v. Superior Court
S114551	In re Raymond Steele on Habeas Corpus

GEORGE
Chief Justice

If exhibits are to be transmitted to this court, counsel must comply with Rule 18(c), California Rules of Court.

